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ABSTRACT

Five of Canada's ten provinces--Newfoundland, Quebec, Ontario, Saskatchewan, and Alberta--maintain systems of publicly supported religious schools, variously referred to as denominational, dissentient, or separate schools. In each of these, funding is shared between the province and the local communities, with the latter depending, for the most part, on property taxes. This paper describes for each of the provinces in question the particular problems that arise in the process, examines the relationship between property tax arrangements and student access, and makes suggestions for change. The first section defines the two basic types of religious school system: denominational (operated by a specific denomination for its own members), and dissentient or separate (in which members of Protestant or Roman Catholic minorities withdraw from the public system to form their own school system). The second section describes arrangements for property taxation to support religious schools in each of the five provinces. Footnotes are included. (TE)

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ALLOCATION OF PROPERTY TAXES FOR RELIGIOUS SCHOOLS IN CANADA*

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Five of Canada's ten provinces maintain systems of publicly supported religious schools, variously referred to as denominational, dissentient, or separate schools. In each of these, funding is shared between the province and the local communities, with the latter depending, for the most part, on that traditional mainstay of public education, the property tax.

The purposes of this paper are to describe for each of the provinces in question the particular arrangements used to allocate property tax in support of religious schools, to comment on particular problems that arise in the process, to examine the relationship between property tax arrangements and student access, and to make suggestions for change.

Denominational, Dissentient and Separate Schools

Conceptually, two different types of religious school systems operate in Canada, though three terms are in common use.[1] The first type of system is the pure denominational system, wherein all members of a given religious faith of voting age are, by virtue of their faith, automatically the electors of their faith's

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school system and their children have a right to attend only schools of that system. The second type of system is that referred to as dissentient (in Quebec) or separate, in which the members of the Protestant or Roman Catholic minorities in a community have exercised a right to withdraw from the public system to form their own school district.

Denominational school systems are found only in Newfoundland and major centres in Quebec. Newfoundland, for example, has four denominational school systems: Integrated Protestant, Roman Catholic, Seventh-Day Adventist, and Pentacostal. Formerly, the Anglican, United, Salvation Army, Presbyterian, and Moravian churches each had their own systems, but joined to form the Integrated system in 1968. For school purposes, the province of Newfoundland and Labrador is then divided into overlapping school boards, 21 Integrated, 15 Roman Catholic, and 1 each for the two smaller sects. Those persons who are not members of one of the faiths which operate a school system or whose faith does not operate a school in their community, may become electors of the system of their choice. The situation is similar in Quebec City and Montreal in Quebec, though in each of these two cities only two systems operate, one Roman Catholic and one Protestant.

Elsewhere in Quebec and in Ontario, Saskatchewan and Alberta, a distinction between "public" and "separate" or dissentient schools apply. By law in these provinces, the first school system that formed was the "public" system. If the trustees elected were, say, Protestant, and appointed a Protestant teacher, then the

Roman Catholic minority was given the right to withdraw from the public system and set up their own, "separate" school district. Conversely, if the trustees were Catholic and appointed a Catholic teacher, then the Protestant minority could withdraw and set up a Protestant separate system.

In practice, the distinction between separate and denominational schools has faded. When the applicable laws were drafted in the mid-19th century, Canada was a rural country in which communities tended to be homogeneous in their religious composition and school boards typically operated a single, one-room school. As the years have passed, school systems and schools have grown, and religious intensity, especially among most Protestants, has lessened, with loyalty being committed to the ideal of a single, non-denominational school system. Even in Newfoundland and major Quebec centers, the Protestant denominational system is the one that tends to enrol those from diverse religious backgrounds and thus takes on the non-sectarian character.

For the most part, Protestant separate school districts in Ontario, Saskatchewan and Alberta merged with Protestant majority public districts while "public" Roman Catholic districts merged with Roman Catholic separate school districts. Today, it is most common in these three provinces to speak of the non-denominational or secular public system, and the Roman Catholic system, though Alberta maintains a few "public" Roman Catholic school districts, and both Alberta and Ontario have one or more Protestant separate school districts.

In Quebec, many Protestant dissentient districts merged with the Protestant denominational boards in the two big cities, while Roman Catholic dissentient boards for the most part became part of the public system. Traditionally, the Protestant school boards have been associated with the anglophone community, while the public school boards have been associated with the French Catholic majority. Nevertheless, a few dissentient Protestant and Roman Catholic school boards remain.

Rights to denominational, separate or dissentient schools are guaranteed in the Canadian Constitution. Thus, any new arrangements for structuring or financing educational systems must be assessed against their constitutionality, a problem that has defeated a number of initiatives in Quebec in recent years and may be raised should Ontario pursue certain reforms suggested by its recent Commission on the Financing of Elementary and Secondary Education in Ontario.[2]

Property Taxation for Religious Schools

The arrangements for taxing real property for denominational, dissentient or separate schools are unique for each province, though the approach taken in Newfoundland is strikingly different from the rather similar approaches used in the other four provinces with such schools systems, where residents and other property owners direct their taxes to either the public or religious system.

Newfoundland[3]

Funding for schools in Newfoundland is shared between the provincial government and local municipalities, though the provincial share is about 95% of the total. Local taxes, consisting of both property taxes and poll taxes, are raised by School Tax Authorities, which now cover approximately 80% of the province.

School Tax Authorities, set up under The Local School Tax Act, are composed of members appointed by school boards and municipalities with a majority of school board representatives. A given Authority reviews the operating and capital needs of school boards operating within its boundaries and sets levies accordingly.

Funds raised are distributed among school boards in the school tax districts in proportion to the numbers of pupils enrolled in each system. Thus, the relative property wealth of a given religious community is of no relevance to the endowment of their system, as funds are allocated on the basis of need (i.e., number of pupils) and not as to their source. For students living outside tax areas, school boards may assess the students' parents.

Section 63 of The Schools Act concerns the right of children to attend school. It states, "No School Board shall refuse admission to any school under its control to a child solely on the ground that the child is of a religious faith which is not the denomination or one of the denominations of the school if there is

no school of his own religious persuasion reasonably available to him." That is, a child is assigned to a school system on the basis of religion if there is a school system of his or her religion; if none is available, the student has a choice. There is, however, some crossing of denominational lines; requests are few in number and are usually settled through administrative agreement. No obvious competition among systems for student enrolment -- and hence tax dollars -- is reported.

Quebec

Access to the property tax by denominational and dissentient school boards has been the focus of both legislation and court battles in Quebec.

In 1979, Quebec adopted its current school finance plan with the enactment of An Act Respecting Municipal Taxation and Providing Amendments to Certain Legislation. Whereas formerly grants had supplemented local taxes in support of education, under the new system grants became the primary mode of support with local taxes being restricted to marginal expenses that were not grant-aided.

This law was challenged in Attorney General of Quebec v. Greater Hull School Board, et al., a case finally decided in the Supreme Court of Canada.[4] It was challenged on four grounds:

1. denominational and dissentient boards no longer had the right to determine their own level of expenses;

2. the Act does not provide for grants as a right;

3. the right to grants being made on a proportional basis (guaranteed by laws in effect in 1867) is abolished;

4. the power to tax beyond the given ceiling is limited, if not abolished for all practical purposes, because of the requirement that the approval of the electors be obtain for expenditures in excess of 6 per cent of the net expenses of the school board or when the taxation rate exceeds 25 cents per hundred dollars of assessment, whichever is lower.

The court ruled the first two points were invalid, but upheld the third and, in part, the fourth. As for proportionality, the court noted,

> The Act Respecting Grants to School Boards, R.S.Q., c. S-36, which provides for grants to be made for special purposes such as the costs of administration and maintenance and payment of teaching personnel, fixes such grants on a basis of so much per student.
>
> I do not doubt that the legislator intended that the Minister's budgetary rules should be bases on proportionality, and the grants are established on a proportional basis, as was indicated at the hearing. However, while the 1861 Act provided this expressly, it is not stated by s. 15.1 of the Education Act. In my opinion, it is a right conferred by law at the time of Union, which is protected by s. 93 of the Constitution Act, 1867.[5]

As for the requirement of a referendum for any levy over the 6 per cent of net expenses or a 25 cents per hundred dollars (i.e., 2.5 mill) tax rate, the majority of the court held it was constitutional off the Island of Montreal, where there was a direct relationship between the electorate of a school board and the class of persons (Catholics or Protestants) whose rights were protected by the Constitution.

On the Island of Montreal, however, they found the requirement unconstitional. There, the six Catholic and two Protestant school boards are funded through the Counseil scolaire de l'Île de Montréal, which collects property taxes for education and distributes them to the eight boards in an equitable manner. The use of a common fund for the denominational boards in Montreal was in place at Confederation, though the Catholic and Protestant school boards, appointed by the municipal councils, each had the right to "such additional sum ... as they think necessary to raise for the support of the Schools under their control."[6]

Since any referendum under the 1979 Act would have had the entire electorate, Catholic and Protestant, voting for any tax increase, the courts found that Catholics and Protestants would have lost the right as individual classes of persons to raise additional funds. Thus, they upheld the fourth objection as far as Montreal was concerned.

A minority of the court, incidentally, believed the requirement of a referendum did prejudicially affect denominational and dissentient rights, since the cost of holding such a referendum would, in effect, prohibit the raising of additional taxes. This fact, not the fact that it also applied to public boards as well, was the important point to the minority.

After the court decision, the government of the Parti Quebecois passed Bill 29 to resolve the outstanding issues. Their solution, which would have removed the two original Protestant and Catholic

boards from the Conseil scolaire de l'Île de Montréal and allowed only Protestants and Roman Catholics (but not Jews, Moslems, etc.) to vote in referenda were not well received and court challenges were planned.

In mid-March, 1986, the new Liberal government announced new grant regulations concerning the allocation of grants and indicated amendments to Bill 29 that would allow all supporters of a given denominational board (regardless of their specific religion) to vote in elections and referenda. As well, legislation allowing for referenda at the time of triennial trustee elections was to be introduced, thereby greatly reducing the cost of holding a tax referendum.

As well, the Protestant and Catholic boards of the City of Montreal have been permitted to join the Conseil scolaire de l'Île de Montréal on a voluntary basis (which they have both chosen to due). The only outstanding financial issue concerns their ability to opt out of specific programs launched by the Conseil. In the past, the upper-tier board has withheld funds for Island-wide programs from the allocations made from the common fund, a practice the denominational boards challenge.

Ontario

Roman Catholic residents of Ontario living within the boundaries of a Roman Catholic separate school system have a choice as to whether they wish to support the separate school system or the

public school system; it is not a choice ordained by their religion. If they choose to support the Catholic system, then they may direct their residential property taxes to that system by indicating that they are separate school supporters at the time of municipal enumeration or filing the appropriate form with their municipal tax office. If they do so, their children are entitled to attend only the separate system without fee.[7]

In cases of mixed marriages (e.g., Catholic and Protestant), a couple may choose to support either the public or separate system, but may not split their residential taxes between the two. Their children, then, have the right to attend without fee only the system which they support. However, the Protestant member of the couple remains an elector in the public system and may vote and run for trustee only in that system, since Protestants (or anyone who is non-Catholic) may not be an elector in a Roman Catholic separate school board.

Protestants, Jews, and other non-Catholic couples cannot be Roman Catholic separate school supporters in Ontario; they must be public school supporters. However, if they wish their children to attend a separate school, they may request it. If the separate school board agrees, then the child may attend. Normally, a fee would be charged the parents (a fee which currently cannot exceed $55 per month) unless the separate board chooses to waive the fee or the public board in which they were resident agreed to pay the fee.

Those who rent but do not own property may also direct the property taxes paid for the apartment or house they rent. Those who neither own nor rent property (e.g., adult children living with their parents) are automatically supporters of the system to which taxes are paid, even if it does not reflect their own beliefs and preferences.

If a residence whose taxes have gone in support of the separate system is sold, the taxes automatically revert to the public system. If the new owner wishes to support the separate system, an appropriate notice must be filed.

In the case of corporate assessment, if a corporation is owned by Roman Catholics, the may may direct the property taxes to the separate school system. However, if the stocks or shares are widely held, only a portion of the taxes up to the share of stocks or shares determined to be held by Roman Catholics can be directed to the separate system. Since in practice this share can rarely be determined (and the courts have held an accurate determination, not an estimate, must be made), corporate taxes usually go in support of a public system.

In the case of business partnerships, if all partners are Roman Catholic, then taxes may directed to the separate school system. However, if one or more partners are not Roman Catholic, the taxes must go in support of the public system.

The laws affecting the direction of property taxes in Ontario have had various affects. First, due to the favoured position of public schools in regards to corporate assessment, public boards generally have higher amounts of commercial and industrial assessments to tax. Second, separate school boards generally maintain assessment offices whose job it is to seek out residential and corporate property whose taxes may be directed, in whole or in part, to the separate system. Third, and probably most important, the system results in parents having to pay fees should they wish to send some of their children to public system and other children to the separate system, assuming of course the receiving board will have them and the sending board will not pay the fee.

Provincial grants, on average, cover only 48% of the operating costs of school boards in Ontario, though these tend to be higher in the case of low assessment school boards, which predominately are Roman Catholic separate school boards. Technically, these grants are paid only for resident pupils.

Some school boards, especially public boards, do not determine which school system a given pupil's parents support. As a result, they may enrol and report as resident pupils for grant purposes students who are not, in fact, eligible. This seems to occur for several reasons. First, the public boards are often opposed to the idea of questioning a student about his or her religion. Second, the process can be troublesome and confusing, particularly in areas of high mobility, broken homes, remarriages, and the

like. Third, public boards have tended to experience greater declines in enrolments than have separate school systems and find the grant more than offsets the marginal increase in costs associated with enrolling the student.

Separate boards do admit some non-Catholic students, though in recent years many have not had much space available. Typically, the student will be reported as a non-resident pupil, and fees will be levied on the parent or sending school board. Grants may be collected for these students, though the province is not bound to pay these grants on a constitutional basis.[8]

The Commission on the Financing of Elementary and Secondary Education in Ontario, whose report was released in March, 1986, has made several recommendations affecting the direction of property taxes. Specifically, they recommend,[9]

> 19. That subsection 126(5) of the Education Act be amended to require corporation assessment in a municipality not designated specifically for public or separate school purposes be assessed for public school or separate school purposes in the same proportion as the residential and farm assessments of the respective boards bear to each other.
>
> 20. That section 126 of the Education Act be amended to allow partnerships to direct a portion of their assessment for separate school purposes where one or more of the partners in a partnership is Roman Catholic.

These recommendations, if implemented, would seem to be of great benefit to separate school boards, since they would have a larger share of the commercial and industrial assessment. However, they also recommend (recommendation 21) that school boards not be

allowed to tax this type of assessment for expenditures above the level of expenditures approved for grant purposes. Since there is complete equalization up to this level, it would seem of little consequence how much a given board might have. Instead, the effect of recommendations 19 and 20 is primarily to redistribute assessment wealth so that no board could exceed the approved level of expenditures with revenue from the provincially determined mill rate set in the province's mill rate equalization grant plan.

It might also be noted that the restriction on a separate board's ability to its tax commercial and industrial assessment may not be constitutional. It might also be noted that, given the only function of these recommendations is to redistribute wealth in order to avoid the introduction of "recapture" or negative grants as part of a school finance system, the Commission might have made recommendations that would have simplified the matter much further, eliminating the right to direct corporation taxes altogether. As it stands, competition for assessment between public and separate school boards and the operation in separate school boards of offices whose sole purpose it is to acquire new assessment will probably continue.

Saskatchewan

The structure of education in Saskatchewan, with its public and separate schools, is rather similar to that in Ontario, with at least one important difference: if a Roman Catholic separate

school system has been created in an area, then all Roman Catholics within its boundaries must be electors of that system, and their children are entitled to attend only that system at the elementary level.[10] Until the mid-1960s, separate schools in Saskatchewan, like those in Ontario, were government funded for elementary education only. When the province did extent government support for Catholic high schools in 1964, it required that both Catholic and public high schools be open to all students, regardless of the student's faith. In general, separate school systems have not been organized in rural Saskatchewan due to the low population density there.

When a Roman Catholic separate system has been created, then the property of a Roman Catholic is to be assessed "with respect to his property ... as a supporter of the separate system", while the property of all others is to be assessed in support of the public school division. In particular, those who are not Catholic are automatically supporters of the public system. (Statutes for setting up Protestant separate school boards remain on the books, but none exist or are likely to be created).

In cases where property is held "by two or more persons as joint tenants or tenants in common, each holder shall be assessed in proportion to his interest in the property in the separate or public school division of which he is a taxpayer ...." That is, in the case of mixed marriages (e.g., Catholic and Jewish), the taxes on a marital residence would be split evenly between the two

systems in communities where both existed. Their children could be resident pupils in either school system.

A company may give notice that its property is to be assessed in whole or in part for separate school purposes. If it does so, s. 294 of The Education Act states, "The share or portion of the property ... assessed ... for separate school purposes ... shall bear the same ratio .. to the whole property of the company within the municipality as the amount ... of the ... shares or stock of the company ... held by supporters of the separate school division bears to the whole amount of shares or stock of the company."

If a company does not give such notice or if its shares are so widely held that it cannot determine the proportion of shares held by separate school supporters, then s. 295 states the assessment is to be shared by the public and separate boards in proportion to each board's share of the "total assessment of properties assessed to persons, other than companies". That is, it is shared in proportion to the residential assessment of the two boards, an allocation based on the relative wealth of the two communities rather than the need of the school systems (as in Newfoundland).

This general rule for sharing non-declared assessment of companies has two limitations. First, if all shareholders of a company are supporters of the public or separate school system, the company may file a statement by May 1, and all taxes will be directed to the appropriate system. This situation would occur if the company

had failed to give notice under s. 294 and found that, under s. 295, is assessment had been split between the two systems.

Second, if the minister determines that the total derived from 1) "the application of the uniform tax rate fixed for the public school division to the taxable assessment of the separate school division" and 2) "the separate school division's share of taxes" from non-declared companies would exceed "the recognized budgetary requirements of the separate school division", then the minister may reallocate the shares of the revenue from the non-declared corporate assessment. This provision seems not to be used in practice, but seems to be a form of "recapture" available should the allocation of non-declared assessment make the separate board wealthy enough in terms of assessed value to raise more than the amount recognized for grant purposes with a mill rate equal to that of the local public board.

To be a trustee in school division, one must own assessable property in it; hence, only Roman Catholics can be trustees in a Roman Catholic separate system. Conversely, Roman Catholics cannot sit as trustees on the public board if a separate school board has been set up, a situation different from Ontario where Catholics may not only be public school supporters, but may run as trustees for the public board.

A number of aspects of Saskatchewan's laws regarding who may support which system have been tested in the courts.

In Regina Public School v. Grattan Separate School, a Saskatchewan statute which altered the allocation of taxes paid by corporations and thereby increased the separate school's share of taxes was held valid.

In McCarthy v. The City of Regina (Bartz' Case), it was held that all rate payers of a separate school district who are of the religious faith of the minority establishing the district should be assessed as separate school supporters whether they voted for the establishment of the districts or not.

In McCarthy v. The City of Regina and Board of Trustees of the Public School Board, it was held that a person who is not of the religious faith of a minority which has established a separate school cannot escape the obligation of being assessed for the support of the public school.[11]

The constitutionality of some of the laws in question has been questioned but not directly tested in court. Some argue that the removal of choice in Saskatchewan, as compared with Ontario, prejudicially affects the rights of the minority, and thus contravenes constitutional guarantees. Chief Justice Haultain commented on this question in the last case cited above, and saw it without merit. He noted, "It might have been a right enjoyed at the time by individual members of the minority, but they are not a class of persons within the meaning of the Saskachewan Act or Sec. 93 of the B.N.A. Act, 1867."[12]

With the adoption of the Canadian Charter of Rights and Freedoms, which came into effect in April 1985, there might be new ground for a test in that s. 15 states, "Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, with discrimination based on race, national or ethnic origin, colour,

religion, sex, age or mental or physical disability." Though s. 29 states, "Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools," it is possible that, should anyone press the case, the courts might now find the lack of choice faced by Roman Catholic's in Saskatchewan violates s. 15 and does not violate s. 29. It should be noted, though, that in Bintner v. Regina Public School Board No. 4, a challenge mounted on similar grounds using the Saskatchewan Bill of Rights, it was held a child of separate school electors could not by right enrol in the local public board.[13]

Alberta

The educational system in Alberta has many similarities with that of Saskatchewan in that public and separate school districts operate in urbanized areas and offer both elementary and secondary education. Alberta, though, has always allowed separate schools to offer secondary education, and still has several Protestant separate and "public" Catholic school boards. School districts in Alberta, however, are not required to admit secondary students whose parents are not supporters of the board, as is the case in Saskatchewan. Alberta's laws concerning who may be separate school supporters (and thus direct their property tax to the separate system) and on the treatment of unassigned corporate assessment also differ in important ways.

Once a separate school system has been set up in Alberta, then all members of the religious minority concerned (Protestant or Catholic) must be supporters of that system, a rule that also holds in Saskatchewan. However, those who are neither Protestant nor Catholic may choose which system to support with their property taxes. If the religion of a property's owners is not known, though, the taxes automatically go to the public system.

In the case of joint tenants or tenants in common, each party is assessed in the district he or she supports and each is assumed to have an equal share. Thus, in the case of a marriage where one spouse is Catholic and the other Protestant, half the assessment would go to the public board and half to the separate board.

When a property whose owner is a separate school supporter changes hands, it is automatically assumed its new owner is a public school supporter and the property becomes assessable for public school purposes. If the new owners is of the faith of the separate school district (or is neither Protestant nor Catholic and wishes to support the separate school system) he or she must notify the municipality within a limited period of time.

Corporations may designate where their taxes are to go, subject to certain conditions. When a separate school district exists, a corporation that has shareholders of the appropriate faith may require a percentage of the property be assessed for separate school purposes. This percentage must reflect the proportion of shares owned by the members of the appropriate faith, or the

proportion of members of the faith in the case of cooperatives or where there are no shareholders. The notice must be approved by resolution of the board. Notices are due by December 1 and go into effect on December 31, remaining in effect until withdrawn, changed or cancelled by subsequent notice.

Most difficulties as far as assessments are concerned arise in regards to procedures that apply if corportations do not give notice. When this occurs, the property will be assessed for public school purposes unless a separate school board gives a special notice requiring part of the property of a corporation be assessed for separate school purposes. Such a notice "shall be given on or before December 15 and becomes effective on the following December 31 and remains in effect until the corporation gives a notice (as to how its taxes should be allocated) ... or subsection (4)." This latter subsection states that the separate school notice is without effect if the corporation provides a statement "under seal of the corporation that all of the shareholders of the corporation are of the same religious faith as the electors of the public school district."[14]

When the separate school does given notice in regards to unassigned corporate property, the corporate assessment is shared in proportion to the number of "resident pupils residing in that district who are under the jurisdiction of the board of the separate school district" to the total number of resident pupils under the jurisdiction of the public and separate boards.

Given the time of year and short period allowed for action, few corporations are likely to act to give such a notice. On the other hand, many separate school districts maintain an assessor's office to monitor the notices given by corporations so that those that fail to give notice by December 1 are given notices by the separate school board by the December 15 deadline. Then, if a corporation's owners are not all of the opposite faith, any notice the corporation gives for allocating the assessment between both boards will only take effect after a year's delay since it would be too late for the December 1 deadline for the year beginning January 1.

Not surprisingly, the competition for assessment sometimes creates hard feelings between separate and public school systems. It has been proposed that all corporation assessment be divided on the basis of residential pupils. Though this would eliminate the problem, it is of arguable constiutionality given that such action would remove the right of Catholics and Protestants to assign their corporate assessment to a separate board.

As it stands, the use of resident pupils to divide unassigned corporate assessment rather than enrolled pupils provides a disincentive for open enrolment policies. That is, the apportionment of the assessment is not based on where students attend school, but on their religion; i.e., on the basis of the school board which has official jurisdiction over them and can claim them as resident pupils. If a child of a separate school supporter attends a public school district (which is under no

obligation to admit the student), then that district receives neither a share of the unassigned corporate assessment in support of that student nor the residential property taxes of the student's parents.

Conclusions

The use of the property tax to support separate and denominational schools and the effects of this practice on the educational systems concerned raise several issue that deserve commend. Four particular matters will be commented upon specifically: the nature of the property tax, questions of equity, the relations between school boards, and student access.

Is the property tax for education a fee for service or a general tax? This question is central to the use made of the tax. The first position is generally taken by those with children in private schools who decry their "double taxation" -- being forced to pay school taxes in addition to school fees. They note, too, that the publicly supported schools are saved the cost of educating their child. In contrast, most tax theorists would argue the tax is a general tax, noting that were parents with children in private schools exempted from paying education tax, it would be logical to exempt those with no children, as well. Also, they note people are not exempted from taxes because they do not need specific public services, such as libraries or parks, though these may charge supplementary user fees.

Quite clearly, the whole idea of directing property taxes to denomiational and separate systems, as practiced in Alberta, Saskatchewan, Ontario, and (with a partial exception for the Island of Montreal) Quebec, is based on the idea of taxes as fees. That is, separate school supporters are exempted from taxation for public schools and allowed to direct their taxes in support of their own schools. As well, denominational supporters may vote in tax referenda in Quebec. Only in Newfoundland are property taxes pooled in total and distributed without regard for the link between the religion of the ratepayer and that of the student.

In practical terms, the right of separate and denominational supporters to direct their taxes is now of marginal importance. All provinces now provide generous equalization grants guaranteeing a reasonable level of funding in all school systems; the funds for these equalization grants come from general taxes reflecting the wealth of the province and, indeed, the nation. Would the idea practiced in Newfoundland that local resources should be distributed on a per pupil basis without regard to religious denomination really prejudicially affect denominational and separate school rights in the other provinces with such schools? In cases where the separate or denominational schools have less in the way of assessment than public schools, which would be the case for most Catholic separate school systems in Ontario, Saskatchewan and Alberta, the opposite would seem to be the case. Yet, the Supreme Court of Canada decision in regards to school referenda in Montreal seems to rule out such mechanisms, unless entered into on a voluntary basis.

The question of equity was originally settled by letting Catholics and Protestants have equal rights to levy taxes on their own members for the support of separate, dissentient or denominational schools, and to receive appropriate shares of provincial grants. When education was primarily a local affair, this may well have been fair. Now, though, with strong emphasis on providing equal school services to all students, with appropriate differentiation based on differing individual needs, the idea that the children of one religious group should receive a higher or lower quality of education because members of their religion are more or less successful in economic terms than the public at large seems distasteful. This issue is quite aside from that of whether or not children whose parents are of a certain religious persuasion should or should not be educated together or should be integrated with children of different religious backgrounds.

No doubt it was in large part to ensure equivalent educational services that Quebec moved to sever the close connection between the wealth of religious communities and school system expenditures. By reducing the property tax to a marginal role in school finance, a high degree of equity was achieved. Their action in this was not particularly different from that of provinces such as British Columbia that had no dissentient or denominational schools. Thus, given present government policies, the ability to direct taxes is fostering inequity, not equity.

The ability to direct taxes, especially in the case of corporations, has served to create antagonism between public and

separate school boards. In Alberta, where unassigned corporate property is credited to the public board unless the separate board files notice, there is a direct rivalry. In Ontario, where unassigned corporate property is credited to the public board, there is simply feeling on the part of separate school supporters of discrimination. And off the Island of Montreal, small Protestant boards often object to the fees charged by the local municipality or public board to collect taxes for them should they decide not to do the collection themselves. One might well conclude that the practice of directing property taxes encouraged religious animosity, an attitute that runs counter to both government policy and contemporary religious values.

Finally, linking the property tax to a child's right to attend school creates a capricious pattern of accessability. As we have noted, the child of a Jew who owns property in Alberta has a choice of two school systems, but only one if no property is owned. In Saskatchewan and Ontario, regardless of property ownership, only the public system is open to the child. In parts of Quebec, the child would legally have a right to attend two systems (e.g., the City of Montreal), but in other parts only one. The rights of children of mixed Catholic/Protestant marriages tend to be greatest, with a choice of two systems in all of the provinces concerned, unless the child is living with a grandparent who is a separate school supporter, in which case the right to attend the public system may be lost.

While the issue of student access is itself controversial, the linkage of access to real property on which taxes are paid is surely an accident of history that has outlived its usefulness.

In sum, it may well be time for public, separate, dissentient, and denominational school boards in the rest of Canada to follow Newfoundland's lead and suspend use their independent right to levy taxes, and to share them equitably at the local level. The courts have ruled that failing to use a right does not in itself result in the loss of a right, so this step could be taken without jeapordizing the privilege, should the need arise, of exercising this right once again.

FOOTNOTES

1. Material in the section is drawn from a number of sources. See, for example, C. B. Sissons, Church and State in Canadian Education, Toronto: The Ryerson Press, 1959; Charles E. Phillips, The Development of Education in Canada, Toronto: W. J. Gage and Company Ltd., 1957; Ministère de l'Education (Québec), The Québec School: A Responsible Force in the Community, Quebec City: Government of Quebec, 1982; Stephen B. Lawton, "Public, Private and Separate Schools in Ontario: Developing a New Social Contract?" Paper prepared for the annual conference of the American Educational Research Association; San Francisco, California; April 16-20, 1986.

   It should be noted that three provinces, New Brunswick, Nova Scotia and Prince Edward Island, traditionally accomodated Roman Catholics within their single, non-denominational schools by allowing open enrolment in a municipality's schools and hiring Catholic teachers, including members of religious orders, to work in certain schools. Indeed, in New Brunswick and Nova Scotia, the Catholic church often built schools and rented them to the public board at low rates. This practice, not protected by Constitutional guarantees, seems to have fallen into disuse except in a few major centres in New Brunswick and, to some extent, Nova Scotia. As well, Manitoba passed laws facilitating religious instruction in its schools after it discontinued support for separate schools in the 1890s.

   Not considered in this paper is provincial support for private schools, including private religious schools, which is available in Quebec, Manitoba, Saskatchewan, Alberta and British Columbia.

2. The Commission on the Financing of Elementary and Secondary Education in Ontario, The Report of the Commission on the Financing of Elementary and Secondary Education in Ontario, Toronto: Government of Ontario, December 1985. In particular, recommendations for a French-language school board in the Ottawa area and restrictions on the extent to which separate school boards may tax commercial and industrial properties may prejudicially affect Roman Catholic separate school boards and therefore not be constitutional.

3. Information for this section is based on The Department of Education and Youth Act, R.S.N. 1970, C. 80; The Local School Tax Act, R.S.N. 1970, C. 220; and The Financing of Elementary and Secondary Education in Canada, 1985, Toronto: Council of Ministers of Education, Canada, July 1985; pp. 66-69.

4. Attorney General of Quebec v. Greater Hull School Board, et al., (1984) 2 R.C.S. 575.

5. Op. cit., p. 591.

6. Op. cit., p. 589.

7. Education Act (Ontario), R.S.O. 1980, C. 129. Various sections are drawn upon for this discussion, including s. 10, s. 32, s. 59, s. 60, s. 83, s. 119, s. 120, s. 126, s. 150, and Reg. 130185.

8. Carl J. Mathews, "Completion of the Seventh of a School System", Orbit, 16(1), pp. 14-16. The main topic discussed in Mathews' article is the Ontario government's decision to fund grades 11 to 13 in the Roman Catholic separate school system, which previously had been funded only through grade 10. In other provinces, all denominational, dissentient and separate system receive government funding to high school completion (grade 11 in Quebec and grade 12 elsewhere). See Stephen B. Lawton, op. cit., for further discussion of this topic.

9. The Commission on the Financing of Elementary and Secondary Education in Ontario, op.cit., pp. 42-43.

10. This section is based primarily on The Local Government Act, 1982, R.S.S. 1982 C. L-30.1; The Local Government Election Amendment Act, 1984; The Education Act, R.S.S. 1982 C. E-0.1 s. 22, s. 292, s. 294, s. 295, and s. 296.

11. Neil Finkelstein, "Legal and Constitutional Aspects of Public Funding for Private Schools in Ontario," Appendix D in The Report of The Commission on Private Schools in Ontario, Bernard J. Shapiro, Commission. Toronto: Government of Ontario, 1985; p. 106.

12. McCarthy v. City of Regina and the Regina Board of P.S. Trustees, (1917) 32 D.L.R. 741 (Sask. S.C.), pp. 745-746.

13. Bintner v. Regina Public School District No. 4 (1965) 55 D.L.R. 646 (Sask. C.A.) leave to appeal denied by the Supreme Court of Canada on February 8, 1966.

14. Alberta School Act, R.S.A. 1980, C.S-3, S.68. Other sections of the Act drawn on for this discussion include S.52, S.59, and S.62-65. See also, Frank Peters, Establishing Separate School Districts: Information and Procedures, 1984, Edmonton: Department of Educational Administration, University of Alberta, 1984. Prepared for the Alberta Catholic School Trustees' Association.